

STATE AUDITOR'S OFFICE

LEAVE INTERPRETATION 97-01¹

TO: Human Resources Directors

DATE: August 31, 1998

SUBJECT: Whether a state employee can use sick leave and family and medical leave for the adoption of a child. Whether a father can use sick or family and medical leave for the birth or adoption of a child.

Question:

May an adopting parent use his or her sick leave for the adoption of a child under three years of age?

Answer:

A state employee may use sick leave for the adoption of a child under three years of age.

Attorney General Opinion No. JM-1203 states:

...a state employee who adopts a child under three years of age is to be treated as if he or she had undergone pregnancy and childbirth. Therefore, an employee who adopts a child under three years of age may use the amount of sick leave that would be necessary to recover from pregnancy and childbirth.

Question:

May the father of a child use his sick leave in conjunction with Family and Medical Leave Act (FMLA) leave for the birth of a child?

Answer:

A state employee who is the father of a child may use his sick leave in conjunction with the child's birth only if the child is actually ill or to care for his spouse while she is recovering from labor and delivery.

Texas Government Code, Section 661.912 (b), requires that all available and applicable vacation and sick leave be exhausted while taking leave for an FMLA-qualifying event. While the use of sick leave may not be appropriate unless the employee's child or spouse is actually ill, all

available vacation leave must be used before placing the employee on leave without pay for an FMLA-qualifying event.

Texas Government Code, Section 661.202 (d), states that an employee can use sick leave when the employee is needed to care for and assist a member of the employee's immediate family who is sick.

¹ This is an updated version of this State Auditor's Office Leave Interpretation. It was updated in 2011 to primarily reflect statutory changes. The previous version can be found at http://www.hr.sao.state.tx.us/Statutes/LI97-01_old.html